

A Proposal to the Great Lakes Legislative Caucus

Friday, March 18th

Drake Hotel, Chicago

Senator Patty Birkholz

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The Great Lakes ANS Coalition: Coordinated Enforcement of Biological Pollution in the Basin



State Senator Patty Birkholz, Chair
Michigan Senate Natural Resources and
Environmental Affairs Committee

Aquatic Nuisance Species (ANS)

- ANS pose a major threat to the ecosystem and overall health of the Great Lakes.
- ANS also pose a major threat to human activity in the basin -- impacts on recreation, tourism and other industries are documented.



Aquatic Nuisance Species



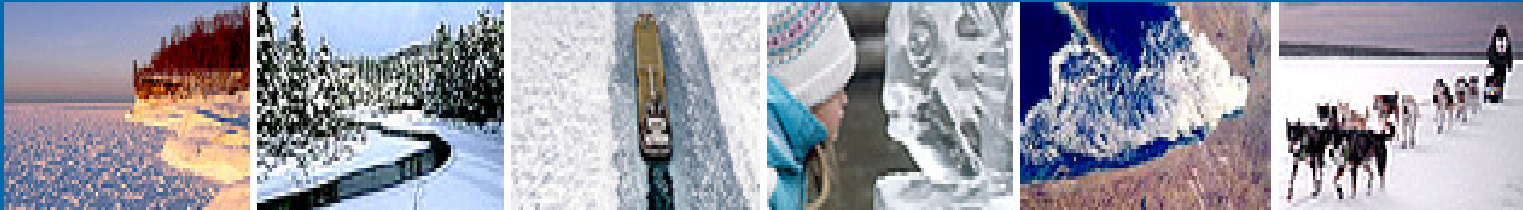
Photo credit: Bay City Times

- Approximately 162 nonnative species have been introduced to the basin.
- The principal vector is the transport of species through the dumping of ballast water in the basin from ocean-going vessels.
- In order to maintain health of the Great Lakes action must be taken to end these invasions.

Current Michigan Law:
Department of Environmental Quality (DEQ)
Duty is to Protect Our Waters!

- Part 31 of the Michigan Natural Resources Protection Act (NREPA)
 - *“the department is to protect and conserve the water resources of the state and shall have control of the pollution of surface or underground waters of state and the Great Lakes, which are or may be affected by waste, disposal of any person.”*

Enforcement Issues



- The DEQ has acknowledged in the past that it is not able to adequately enforce current water pollution law with regard to ballast water due to:
 - Lack of resources.
 - The need for a unified basin-wide approach.

Federal Government Actions

- Congress has enacted federal laws designed to control these invasions.
- But, the lack of adequate enforcement and liberal use of exemptions from these laws have continued to provide routes for more introductions.



The Clean Water Act

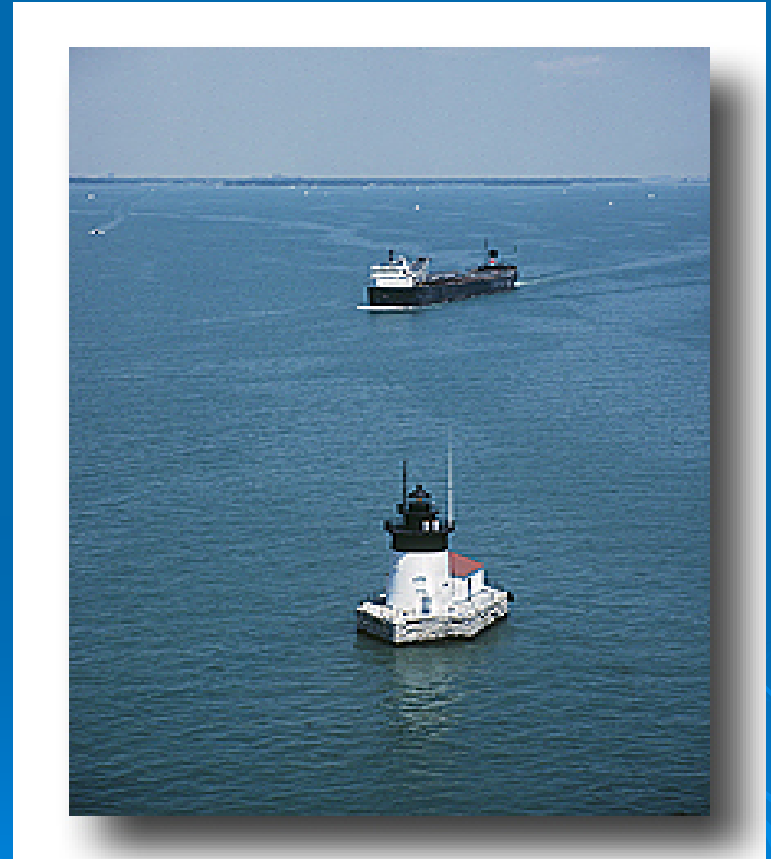
- According to 40 CFR section 122.3(a), the discharge of ballast water is exempt from the protection of the Clean Water Act (CWA).
 - Considered one of the most damaging blows that has been dealt to the work to clean up the Lakes.
 - Helps to explain the current climate for advancing Great Lakes concerns in Washington.

National Invasive Species Act (NISA)

- Once considered to represent a significant attempt to control the introduction of new nonnative species throughout the country.
- Establishes guidelines for the development of both a national and a Great Lakes ballast water control program.
- Ballast exchange or treatment from ocean-going vessels is required before entering the Great Lakes.
- However, it contains significant loopholes!

NISA “Loopholes”

- If the ship's captain makes a declaration of no ballast on board (NOBOB), basing the declaration on the belief that he or she has no effective ballast on board the ship, the ballast exchange is not required and the ship is then effectively “outside” the regulations of NISA.



“NOBOB” Debate

- Some question whether the NOBOB declaration is employed too liberally as a way of getting around ballast water controls.
 - More scrutiny should be placed on these declarations to ensure that no ballast is on board.
- Scientists have demonstrated that despite even the most rigorous attempts to remove all ballast water, some may still remain.
 - Ongoing efforts have been focused on treating ANS that might exist in the remaining ballast water, with various stakeholder groups studying and testing new ballast water control technologies.

Other Federal Efforts

- “A Great Lakes Action Plan for the Prevention and Control of Nonindigenous Aquatic Nuisance Species”
 - A non-binding regional, basin-wide agreement signed in December 2002 by the Council of Great Lakes Governors.
 - Contained a number of goals and principles that all signatories would work towards in fashioning new laws and policies.
 - Represents a collaborative agreement of key public officials, but has had little if any impact at all on the problem.

Michigan Enters the ANS Battle with Public Act 114 of 2001

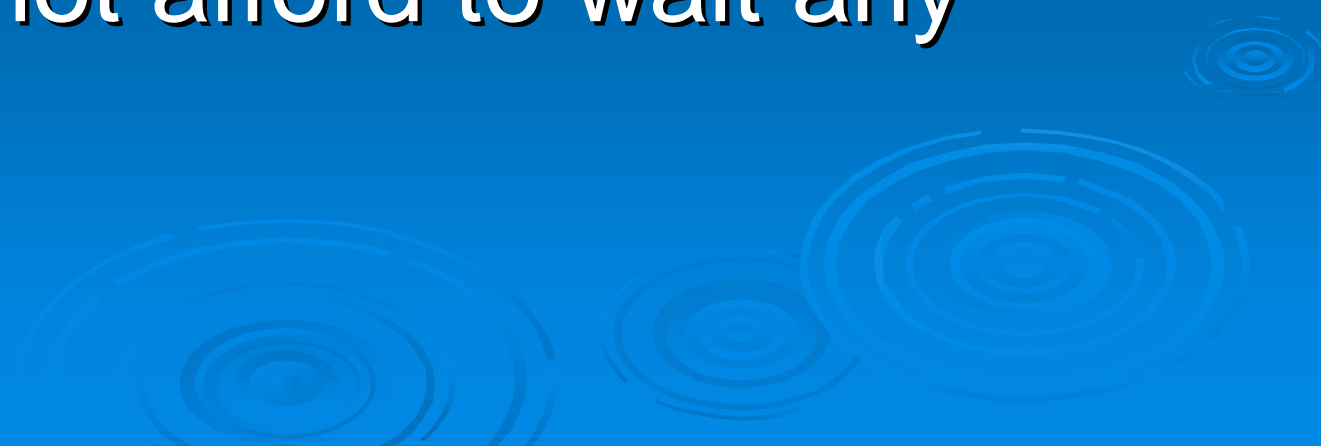
- Represents one of the most significant steps made in the Great Lakes basin toward curbing the invasion of ANS.
- Requires the DEQ to develop a ballast water reporting program that lists all ships that have complied with voluntary ballast water reporting requirements.



Public Act 114 of 2001 (continued)

- Also requires the DEQ to report to the Legislature on *“the development of acceptable ballast water treatment methods” that may ultimately be used to help end the invasion of new ANS.*
- The DEQ has documented that there are effective treatments for different kinds of ships. We expect a full report from our DEQ the week of March 21st.

“Where Do We Go From Here?”

- We know effective technology exists.
 - We know the treatment options are available now.
 - We cannot afford to wait any longer.
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Introducing The Great Lakes ANS Coalition

A coordinated basin-wide approach to end biological pollution from **ocean-going vessels** in the basin.

Takes the place of federal regulations that have not provided any measure of control.

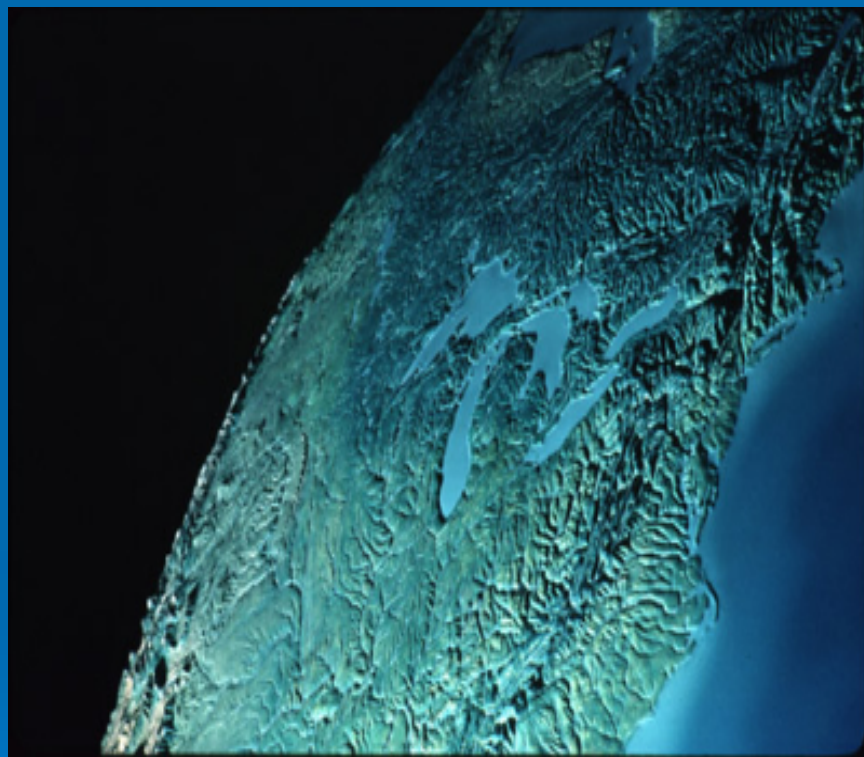


The Great Lakes ANS Coalition Legislation

- Designed to make minor modifications to all existing water pollution laws in all the Great Lakes states to forge a common, coordinated regulatory program that will end harmful discharges of biological pollutants.
- Will focus squarely on ballast water discharges from ocean-going vessels.
- Will establish a source of funding through either fees or the Great Lakes Protection Fund.

Michigan Water Pollution Laws-- representative of other basin laws

- Current authority to work with other states
 - MCLA 324.3103(a), 324.3104
- Current prohibitions
 - MCLA 324.3109, 324.9502
- Current authority to inspect
 - MCLA 324.3105
- Current authority to set standards for water pollution
 - MCLA 324.3106
- Current authority to enforce, assess fines, and issue injunctions
 - MCLA 324.3115



Michigan Law Encourages a Coordinated Approach

➤ Sec. 3103a.

(1) *"The legislature finds both of the following:*

- (a) *It is a goal of this state to prevent the introduction of and minimize the spread of aquatic nuisance species within the Great Lakes.*
- (b) *That, to achieve the goal stated in subdivision (a), this state shall cooperate with the United States and Canadian authorities, other states and provinces, and the maritime industry."*

➤ MCLA 324.3104

(1) *"The department is designated the state agency to cooperate and negotiate with other governments, governmental units, and governmental agencies in matters concerning the water resources of the state, including, but not limited to, flood control, beach erosion control, and water quality control planning, development, and management."*

Michigan Law Prohibits Broad Range of Pollutants

➤ MCLA 324.3109

- (1) *“A person shall not directly or indirectly discharge into the waters of the state a substance that is or may become injurious to any of the following:*
- (a) *To the public health, safety, or welfare.*
 - (b) *To domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of such waters.”*

Michigan Law Provides for Inspections

- Sec. 3105.
- *“The department may enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions relating to the pollution of any waters of the state...The department may call upon any officer, board, department, school, university, or other state institution and the officers or employees thereof for any assistance considered necessary to implement this part.”*

Michigan Law Allows Department to Set Standards for Pollution

➤ MCLA 324.3106

➤ *“The department shall establish pollution standards for lakes, rivers, streams, and other waters of the state in relation to the public use to which they are or may be put, as it considers necessary.”*

Michigan Law Provides for Fines and Penalties

➤ Sec. 3115.

(1) *“The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a provision of a permit or order issued or rule promulgated under this part.”*

“In addition to any other relief granted under this subsection, the court, except as otherwise provided in this subsection, shall impose a civil fine of not less than \$2,500.00 and the court may award reasonable attorney fees and costs to the prevailing party. However, all of the following apply:

(a) *The maximum fine imposed by the court shall be not more than \$25,000.00 per day of violation.”*

These laws already provide adequate authority for the DEQ to implement most of the tools for a biological water pollution program to end further invasions of aquatic nuisance species coming from ballast water discharge.



We Need to Simply Coordinate State and Provincial Law

- All Great Lakes states and provinces have similarly broad provisions designed to prohibit pollution of the waters of the state.

Funding



- These inspection programs and other regulatory components could be funded in a coordinated fashion in the early years by a grant from the **Great Lakes Protection Fund**, whose mission is to:
 - “fund state and regional activities and programs that result in the protection, research, and cleanup of the Great Lakes.”

Phase-In



- In order to provide for adequate time for the ocean-going shipping industry to make the necessary accommodations to their ballast water management practices, an appropriate phase-in period would be provided in the Coalition's charter documents.

Legislative Steps

- Amend current water pollution laws to clarify that biological pollutants are a prohibited substance.
- Authorize DEQ or the appropriate state agency to enter into agreement with other basin states to create a coordinated basin-wide approach to regulate the discharge of any substance that contains biological pollutants.
- Establish a common standard for allowable discharge levels and a permit and fee system for ocean-going vessels.

A Model Approach



- These components of legislation would be used as a model to help other states develop appropriate changes to their state laws, so that a consistent basin-wide program would be in effect.

Interest Group Involvement



- Key regional interest groups should be contacted for their input and support.
 - The National Wildlife Federation
 - The Lake Michigan Federation
 - The International Joint Commission
 - The Great Lakes Commission
 - The Great Lakes Fishery Commission

Proposed Course of Action

- The Great Lakes Legislative Caucus is an ideal forum for beginning discussions on this proposal.
- Much foundational work must be done in order to interest policymakers around the basin.
- A key issue that must be agreed to is how we will coordinate a permitting program and what standard will be used to permit discharges.
- Funding is also an essential element—how can we coordinate a funding request from the Great Lakes Protection Fund as a model pilot program (with fees considered in the ensuing years)

We Need to Act Now to put the pieces in place for the foundation of the Great Lakes ANS Coalition!

Thank you for your commitment to the health of the Great
Lakes!

Senator Patty Birkholz
senpbirkholz@senate.michigan.gov
517-373-3447
wwwmichigan.gov